

**Amendment Six
to Contract No. 229944
for the Design, Implementation, Operation and Maintenance of
the Regional Fare Coordination System**

This Amendment Six to the Contract for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System is entered into this 17th day of December, 2004, by and between ERG Transit Systems (USA) Inc, a California corporation and wholly owned subsidiary of ERG Limited, an Australian corporation, (hereinafter referred to as the "Contractor") and each of the following seven public transportation agencies (hereinafter referred to individually as an "Agency" or collectively as the "Agencies"):

1. Central Puget Sound Regional Transit Authority ("Sound Transit")
2. King County ("King County")
3. Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
4. Pierce County Public Transportation Benefit Area ("Pierce Transit")
5. Snohomish County Public Transportation Benefit Area ("Community Transit")
6. City of Everett ("Everett")
7. State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

Recitals

- A. Effective April 29, 2003, each of the Agencies and the Contractor entered into Contract #229944 ("Contract") to implement a Regional Fare Coordination System ("RFC System") to establish a common fare system utilizing smart card technology. The Contractor is responsible for the development, implementation, operation and maintenance of the RFC System as specified in the Contract.
- B. The Contract requires the Contractor to have its security procedures and physical facilities audited on an annual basis by a qualified, nationally recognised firm.
- C. The Contractor desires to enter into this Amendment Six to delay commencement of its first security audit, thereby also adjusting the dates of

future security audits, and the Agencies are agreeable to said change subject to the terms and conditions herein.

- D. The contractor and the Agencies further desire to clarify when the Contractor is required to make escrow deposits.
- E. The Contractor and the Agencies further desire to enter into this Amendment Six to correct two cross references set forth in the Contract and to clarify the Contractor's obligations regarding the timing of escrow deposits.

Agreement

NOW THEREFORE, in consideration of the mutual covenants contained herein and in the Contract, the sufficiency of which is hereby acknowledged, each Agency and the Contractor hereby agrees to amend the Contract as follows:

Section 1.0

Section 3.I-11.3 of the Contract is hereby amended to read as follows:

11.3 Contractor shall have its security procedures and physical facilities audited by a qualified, nationally recognized firm, and Contractor shall take such actions as may be identified in such audit as necessary to comply with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. The Contractor shall complete its initial security audit no later than November 26, 2004. The Contractor shall complete a second audit no later than May 31, 2005, and then shall conduct such audits by May 31 annually thereafter. Subject to the confidentiality provisions of this Contract, Contractor shall direct the auditor to provide the Contract Administrator with a copy of the report of such audit within fifteen (15) days after it is completed.

Section 2.0

2.1 Section 3.I-28.1 of the Contract is hereby amended to read as follows:

28.1 Agency Caused Delays are delays that affect a Critical Path as defined in the approved Baseline Project Schedule and arise from the following matters and no others: (a) a suspension order pursuant to Section 3.I-30 not caused by the actions or inactions of the Contractor, (b) failure or inability of the Agencies to obtain the permits it agrees in its sole discretion to obtain, (c) failure of the Agencies to provide availability of Transit/Ferry facilities according to the schedule for such availability provided by the Agencies, (d) failure of the Agencies to provide operation rules in a timely manner, (e) unavoidable delay

caused by governmental action which is beyond the control of and could not have been reasonably anticipated by the Contractor, (f) failure of the Agencies to comply with Section 2.1-2.3, or (g) any additional Work requested by the Agencies. Any court order to suspend Work shall not be considered an Agency Caused Delay (although it may qualify as a Force Majeure Event) despite the fact that the Agencies may specifically direct the Contractor to comply with the court order.

2.2 Section 3.1-35.4.3(c) of the Contract is hereby amended to read as follows:

35.4.3 Contractor IP

(c) Upon any expiration or termination of this Contract or any successor RFCS O&M contract(s) with the Contractor:

1. Each Agency shall have the right to use, copy, store, maintain, modify, update, upgrade, make Derivative Works from, and adapt all Contractor IP and IP Materials for the Contractor IP for the purposes of completing development of, and/or operating, maintaining, expanding, improving and modifying the DDU and the RFC System in the Territory. By way of illustrative example, said Contractor IP and IP Materials for the Contractor IP include:

- a. the Contract Deliverables required to be delivered to the Agencies and specifically identified in Section 35.5. as containing Contractor IP
- b. the IP Materials for the Contractor IP referenced in Section 35.4.3(b)(1) and (3) above
- c. the other IP Materials for the Contractor IP that come into Agency possession only upon release from escrow

Each Agency shall also have the right to transfer to its successor and sublicense the aforesaid rights to: its Agency Consultants; its other third party contractors; and any new members that join the RFCS, subject to each Agency requiring same to undertake the protective measures required under Section 35.4.3(f).

2. Each Agency and all persons and entities who are participants in the RFCS, including but not limited to the Agency's employees, contracted transit service providers, Institutions, Third-party Retail Revalue Providers, and holders of cards that contain the RFCS Application, shall have such rights to use, copy, display, transmit, distribute and store in any media now known or hereafter developed, Contractor IP and IP Materials for the Contractor IP as specified in Section 35.4.3(b)(1), to the extent necessary to enable them to participate in the RFCS as contemplated in this

Contract. By way of illustrative example, said rights include the rights to use, copy, distribute and store: software and firmware constituting Contractor IP, in object code only, on RFCS equipment and smart cards; User Documentation related to Contractor IP; and General Public Documentation related to Contractor IP.

3. Each Agency shall have the right to transfer to its successor and sublicense the rights in this Section 35.4.3(c) to: its Agency Consultants; its other third party contractors; and any new members that join the RFCS, subject to each Agency requiring same to undertake the protective measures required under Section 35.4.3(f).

4. Provided, however, the Agencies shall be required to pay Contractor an annual royalty fee, as specified below, (in total for all Agencies that are, or hereafter become, members of the RFCS) if the Agencies elect to sublicense their license rights under this Section 35.4.3(c) to a third party contractor (other than an Agency Consultant) to perform O&M services on the RFCS but only if the third party contractor succeeds the Contractor under one of the following events:

- a. this Contract expires after Contractor completes ten (10) years of operation and maintenance of the RFCS, and
 1. the third party contractor is contracted to provide O&M services of substantially the same scope as the O&M portions of this Contract; and
 2. the Contractor had submitted a proposal but the third party contractor was awarded the successor O&M contract; and
 3. the third party contractor that was awarded the successor O&M contract is unable to perform the O&M contract without the rights to Contractor IP and IP Materials sublicensed under this Section 35.4.3(c); or
- b. the Agencies terminate this Contract for convenience under Section 3.1-66.2 prior to completion of ten (10) years of operation of the RFCS, and
 1. the third party contractor is contracted to provide O&M services of substantially the same scope as the O&M portions of this Contract; and
 2. the third party contractor is unable to perform the O&M contract without the rights to Contractor IP and IP Materials sublicensed under this Section 35.4.3(c).

The payment of any annual royalty fee due under this Section 35.4.3(c)(4) shall be due at the end of each twelve-month period following commencement of a third party contract triggering such a fee. In the event an annual royalty fee is triggered by the termination for convenience circumstances specified in Section 35.4.3(c)(4)(b), the annual royalty fee shall be the amount specified below for the year in which the termination occurs (pro rated by remaining months if the termination occurs mid-year) and thereafter, the amount specified for each year remaining in the ten year O&M period after the termination for convenience.

Contract commencement through O&M Year 1:	\$750,000
O&M Year 2:	\$700,000
O&M Year 3:	\$650,000
O&M Year 4:	\$600,000
O&M Year 5:	\$550,000
O&M Year 6:	\$500,000
O&M Year 7:	\$450,000
O&M Year 8:	\$400,000
O&M Year 9:	\$350,000
O&M Year 10:	\$300,000

In the event an annual royalty fee is triggered by the expiration circumstances specified in Section 35.4.3(c)(4)(a), the annual royalty fee shall be \$100,000 subject to possible annual adjustment in accordance with adjustment calculation set forth in Section 3.1-76.6. Notwithstanding any other provision of this Contract, no royalty fee shall be due and payable upon the earlier occurrence of: the Contractor ceases to do business in the ordinary course; the Contractor ceases to be able and willing to perform the O&M services being performed by the third party contractor; or the Agencies have made ten annual royalty fee payments, whichever shall first occur.

Section 3.0

3.1 Section 3.1-35.2.6 of the Contract is hereby amended to read as follows:

35.2.6 The Contractor shall provide to the Agencies all IP Materials for all DDU IP, and for all Updates and Upgrades of such DDU IP as follows:

Prior to Full System Acceptance: At such time as the Contractor submits written notice of completion of a Project or Payment Milestone to the Contract Administrator, the Contractor shall also provide, and deliver to the escrow firm, IP Materials, whether in draft or final format, for any DDU IP provided prior to completion of that Milestone.

After Full System Acceptance: Every six months following Full System Acceptance, or sooner at the Contract Administrator's reasonable request, the Contractor shall provide the Contract Administrator with, and deliver to the escrow firm, any IP Materials for new or modified DDU IP and applications, including but not limited to any DDU IP Updates and Upgrades, provided by the Contractor since the previous delivery.

3.2 Exhibit 10, Section 5.1, of the Contract is hereby amended to read as follows:

5.1 Within ninety (90) days after execution of the Contract, Contractor shall deposit with the escrow firm any Escrowed Items then in existence. Thereafter, the Contractor shall deposit Escrowed Items as follows:

Prior to Full System Acceptance: At such time as the Contractor submits written notice of completion of a Project or Payment Milestone to the Contract Administrator, the Contractor shall deposit with the escrow firm the Escrowed Items related to any Intellectual Property created or provided for the RFCS since the previous deposit.

After Full System Acceptance: Every six months following Full System Acceptance, or sooner at the Contract Administrator's reasonable request, the Contractor shall deposit with the escrow firm any Escrowed Items related to Intellectual Property, including software Updates and Upgrades, provided by the Contractor since the previous delivery.

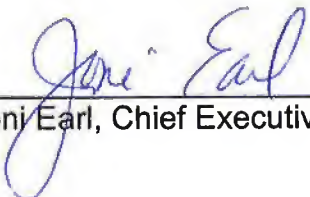
Section 4.0

All other provisions of the Contract not referenced in this Amendment Six shall remain in effect.

IN WITNESS WHEREOF, authorized representatives of the Agencies and the Contractor have signed their names in the spaces provided below.

**Central Puget Sound Regional Transit
Authority
("Sound Transit")**

**Snohomish County Public
Transportation Benefit Area**



Joni Earl, Chief Executive Officer

Joyce F. Olson, Chief Executive Officer

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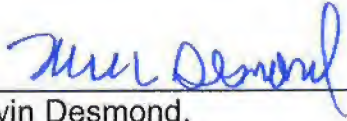
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Joyce F. Olson, Chief Executive Officer

King County



Kevin Desmond,
Transit General Manager

**Kitsap County Public Transportation
Benefit Area**

Richard M. Hayes, Executive Director

**Pierce County Public Transportation
Benefit Area**

Don S. Monroe, Chief Executive Officer


City of Everett

Ray Stephanson, Mayor,
or by his designee Paul J. Kaftanski,
Director of Transportation Services

**Washington State Ferries, Washington
State Department of Transportation**

Douglas B. MacDonald

ERG Transit Systems (USA) Inc.

By: 

Mike C. Nash
Regional Managing Director

King County

Kevin Desmond,
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W. Michael Anderson for

Douglas B. MacDonald

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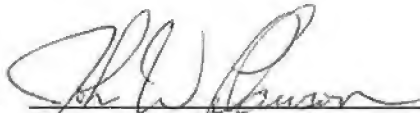
By: *Mike Nash*

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